THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.12723 OF 2006

DATED: 9th AUGUST, 2006.

Between:

V. Kalyan Kumar … Petitioner

And

1. M/s. PNB Housing Finance Limited,
   Having its Regd. Office at 9th Floor,
   Antriksh Bhawan, 22, Kasturba Gandhi Marg,
   New Delhi, rep. by its Managing Director
   And 2 others. .. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.12723 OF 2006

ORDER :

This writ petition is filed seeking a declaration that the notice dated 13-4-2006 under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, issued by the 2nd respondent – M/s. PNB Housing Finance Limited as arbitrary and illegal; and consequently to set aside all further proceedings pursuant to the said notice including dispossession of the petitioner from Flat No.104 of Kalyan Bharathi Enclave bearing H.No.24-30B, Plot No.4 in Sy.No.325/1(p) of Neredemet village, Government Basic Training School, Malkajgiri Municipality and Mandal, Rangareddy District.

The petitioner states that he availed loan of Rs.8,00,000/- from the respondents which is repayable in 180 equal monthly installment at Rs.8,250/- per month. It is stated that though he paid the monthly installments regularly upto 19-6-2006, thereafter he could not make the payments. It is alleged that the impugned notice was issued under Section 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Securitisation Act') without following the mandatory procedure prescribed under the Securitisation Act.

It was primarily contended that the impugned notice was not preceded by any notice as required under sub-section (2) of Section 13 of the Securitisation Act. It was also pleaded that consequent to the

impugned notice dated 13-4-2006, the petitioner was also served with a notice dated 19-6-2006 issued by the Advocate-Commissioner appointed under Section 14 of the Securitisation Act to take possession of the property in question.

On behalf of the respondents, a counter-affidavit has been filed in which it is clearly stated that a notice under Section 13 (2) of the Securitisation Act was sent to the petitioner to his residential address given by him as per the loan documents and also to the address of the property mortgaged to the Bank. One of the said notices was served on the petitioner, but he failed to respond. Hence, the notice under Section 13 (4) of the Securitisation Act was issued on 16-5-2005 and the same was also served on the petitioner on 24-5-2005. Thereafter, the said notice was also published in the local dailies on 13-4-2006. Consequently, the Advocate-Commissioner was appointed on an application made by the respondent Bank under Section 14 of the Securitisation Act and when the Advocate-Commissioner for the purpose of taking physical possession of the property issued a notice dated 19-6-2006 the present writ petition has been filed making all false allegations.

Having heard the learned Counsel for both the parties, it is clear that the petitioner was served with a notice under Section 13 (2) of the Securitisation Act long back in the year 2005. Thereafter, he was also served with a notice under Section 13 (4) of the Securitisation Act on 24-5-2005.

Nothing has been placed before this Court by the petitioner to contradict the specific plea of the respondents that the notices under Sections 13 (2) & 13 (4) of the Securitisation Act were served on the petitioner. It is also clear from the material placed before this Court that the notice under Section 13 (4) of the Securitisation Act was published in the local dailies and since the petitioner did not hand over the possession, the Advocate-Commissioner was appointed under Section 14 of the Securitisation Act. Hence, the interference by this

Court is not warranted.

Though the petitioner disputed the liability, since admittedly a remedy of appeal is available under Section 13 (4) of the Act, I am not inclined to express any opinion on merits. Instead, I deem it appropriate to dispose of the writ petition granting leave and liberty to the petitioner to prefer an appeal as available under the Securitisation Act. Keeping in view the interim order of stay of dispossession granted by this Court has been in force till today, the respondents are directed not to dispossess the petitioner from the property in question for a period of two weeks from today.

Writ Petition is accordingly disposed of. No costs.

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G. ROHINI, J.

Dt. 9-8-2006
gbs

PARTICULARS

Name of the Candidate : B. Padma

Hall Ticket No. : 9076

Attended interview for the post of : Typist

Date of interview held on : 13-7-2006

Category : S.T.

PARTICULARS

Name of the Candidate : B. Shankar

Hall Ticket No. : 8507

Attended interview for the post of : Copyist

Date of interview held on : 13-7-2006

Category : S.T.